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JFW

## TRANSMITTAL FORM

|                        |                       |
|------------------------|-----------------------|
| Application Number     | 09/153,621            |
| Filing Date            | September 15, 1998    |
| First Named Inventor   | Roger Q. Smith et al. |
| Art Unit               | 2841                  |
| Examiner Name          | T. Dinh               |
| Attorney Docket Number | TN-1444               |

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

23

### ENCLOSURES (check all that apply)

|  |   |  |
|--|---|--|
| <input type="checkbox"/> Fee Transmittal Form<br><input type="checkbox"/> Fee Attached<br><input type="checkbox"/> Amendment / Reply<br><input type="checkbox"/> After Final<br><input type="checkbox"/> Affidavits/declaration(s)<br><input type="checkbox"/> Extension of Time Request<br><input type="checkbox"/> Express Abandonment Request<br><input type="checkbox"/> Information Disclosure Statement<br><input type="checkbox"/> Certified Copy of Priority Document(s)<br><input type="checkbox"/> Reply to Missing Parts/ Incomplete Application<br><input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)<br><input type="checkbox"/> Licensing-related Papers<br><input checked="" type="checkbox"/> Petition<br><input type="checkbox"/> Petition to Convert to a Provisional Application<br><input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address<br><input type="checkbox"/> Terminal Disclaimer<br><input type="checkbox"/> Request for Refund<br><input type="checkbox"/> CD, Number of CD(s) _____<br><input type="checkbox"/> Landscape Table on CD | <input type="checkbox"/> After Allowance Communication to TC<br><input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences<br><input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)<br><input type="checkbox"/> Proprietary Information<br><input type="checkbox"/> Status Letter<br><input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):<br>Return Post Card |
| <b>Remarks</b>   |   |  |

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

|              |                     |          |        |
|--------------|---------------------|----------|--------|
| Firm         | Black & Decker Inc. |          |        |
| Signature    |                     |          |        |
| Printed Name | Adan Ayala, Esq.    |          |        |
| Date         | June 30, 2005       | Reg. No. | 38,373 |

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| Typed or printed name | Adan Ayala, Esq. | Date | June 30, 2005 |

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: **Roger Q. SMITH et al.**

Serial No.: **09/153,621**

Examiner: **T. Dinh**

Filed: **September 15, 1998**

Group Art Unit: **2841**

For: **HEAVY-DUTY AUDIO EQUIPMENT**

Assistant Commissioner for Patents  
Washington, DC 20231

**PETITION TO WITHDRAW  
HOLDING OF ABANDONMENT**

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June 30, 2005

  
Adan Ayala

Dear Sir:

In response to the Notice of Abandonment mailed June 27, 2005, Applicants hereby request the withdrawal of the holding of abandonment on the above-identified application pursuant to 37 CFR § 1.181(a) and MPEP § 711.03(c).

The Examiner has held that the present application has become abandoned because a response to the Office Action mailed on October 4, 2004 was not received. Applicants respectfully disagree because a response to the Office Action was timely filed with the Patent Office.

In particular, a Notice of Appeal was filed on October 11, 2004. This filing in turn required the filing of an Appeal Brief by December 11, 2004.

Applicants hereby attach a copy of the Appeal Brief mailed December 10, 2004 mailed in response of the Office Action. Under 37 CFR § 1.8(a)(1), correspondence required to be filed in the PTO within a set period of time is considered timely filed if (a) the correspondence is mailed as first class mail prior to expiration of the set period for response and (b) the correspondence includes a signed certificate stating the date of deposit.

In the present case, the Appeal Brief was mailed as first class mail on December 10, 2004. This was before the expiration of the period set for filing a response. Second, Applicants' attorney signed a certificate stating the date of deposit, i.e., December 10, 2004, as shown on the actual Brief. Accordingly, the requirements of § 1.8(a)(1) have been met. Therefore, the Appeal Brief must be considered timely filed and the holding of abandonment must be withdrawn.

Furthermore, Applicants note that the provisions of 37 CFR of § 1.8(b) apply to the present case. According to the rules, if the correspondence is considered timely filed under § 1.8(a) but was not received in the PTO, and the application is held to be abandoned, the correspondence will be considered timely if "the party who forwarded such correspondence: (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence; (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing."

In the present case, Applicants are presently informing the Office of the previously-filed Appeal Brief promptly after becoming aware that the Office did not receive the correspondence. In particular, the Examiner made Applicants' attorney aware of the lack of

receipt on June 22, 2005. On that date, Applicants' attorney informed the Examiner that an Appeal Brief was mailed on December 10, 2004. Based on the discussions with the Examiner, Applicant's attorney agreed to wait for the Examiner's Notice of Abandonment before filing the present Petition. The present petition is being filed within two weeks from June 22, 2005 and less than one week from the Notice of Abandonment. Accordingly, Applicants have promptly informed the Office of the previously-filed Appeal Brief.

As to the second requirement under § 1.8(b), Applicants have attached a copy of the previously-filed Appeal Brief, as discussed above.

Finally, Applicants' attorney hereby attests on a personal knowledge basis that the Appeal Brief was timely mailed on December 10, 2004.

Because all the requirements of 37 CFR § 1.8(b) have been met, the Appeal Brief should be considered timely filed.

Finally, the Applicants respectfully traverse the Examiner's reason for the holding of abandonment. According to the Examiner, the reason for such holding was the "interview with Mr. Adan Ayala on June 22, 2005 that the applicant fails to timely response or file the appeal brief over 8 months." The Examiner is misunderstanding the statements of the Applicants' attorney. What the Applicants' attorney said during the interview was that (a) an Appeal Brief was timely filed on December 10, 2004, but (b) Applicants did not have a postcard stamped by the PTO to prove receipt by the Office. Such statements cannot be interpreted to mean that Applicants failed to timely file the Appeal Brief.

No fee is due under the present petition. *See* MPEP § 711.03(c)(I) ("a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment ... does not require a fee."). Nevertheless, the Commissioner is hereby authorized to charge payment

**UTILITY PATENT**

**Docket No. P-US-TN1444**

of any fees due in processing this petition, or credit any overpayment to Deposit Account  
No. 02-2548.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Adan Ayala', written over a horizontal line.

Adan Ayala  
PTO Reg. No. 38,373  
Attorney for Applicant

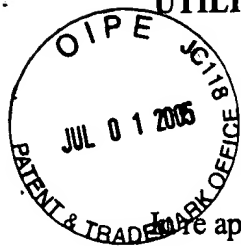
Adan Ayala - TW-199  
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(410) 716-2368

UTILITY PATENT

B&D No. P-US-TN1444

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BOARD OF PATENT APPEALS AND INTERFERENCES



In re application of: **Roger Q. SMITH et al.**

Serial No.: **09/153,621**

Examiner: **T. Dinh**

Filed: **September 15, 1998**

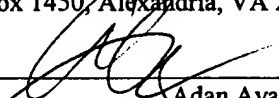
Group Art Unit: **2841**

For: **HEAVY-DUTY AUDIO EQUIPMENT**

Assistant Commissioner for Patents  
Washington, DC 20231

**APPEAL BRIEF**

I, Adan Ayala, Reg. No. 38,373, certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on Dec. 10, 2004

  
\_\_\_\_\_  
Adan Ayala

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UTILITY PATENT

B&D No. P-US-TN1444

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**BOARD OF PATENT APPEALS AND INTERFERENCES**

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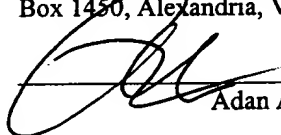
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For: **HEAVY-DUTY AUDIO EQUIPMENT**

Assistant Commissioner for Patents  
Washington, DC 20231

**APPEAL BRIEF**

I, Adan Ayala, Reg. No. 38,373, certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on Dec. 10, 2004

  
Adan Ayala

Dear Sir:

**I. INTRODUCTION**

A final Office Action was mailed on October 4, 2004. In response to such Office Action, a Notice of Appeal was mailed on October 11, 2004, for the above-identified application. The present appeal brief is being timely filed as required under 37 CFR § 41.37.

**II. REAL PARTY IN INTEREST**

The real party in interest in the present case is Black & Decker Inc. An assignment transferring all rights to the present application and resulting patents was filed in the present application. The assignment was recorded on November 2, 1998 and can be found at Reel 9560, Frame 0625.



**III. RELATED APPEALS AND INTERFERENCES**

No other appeals or interferences related to the present case are currently pending.

**IV. STATUS OF CLAIMS**

Claims 1-6 and 15-20 are currently pending in the present application.

Claims 1-6 are rejected and are presently appealed.

**V. STATUS OF AMENDMENTS**

No amendments have been filed subsequent to the final Office Action.

**VI. SUMMARY OF CLAIMED SUBJECT MATTER**

Pursuant to 37 CFR § 41.37 and MPEP § 1206, Applicant/appellant hereby provides a concise explanation of the inventions defined in the claims involved in the present appeal. This explanation refer to the specification by page and line number and to the drawings, as required by the CFR and the MPEP rules. However, the following explanation only refers to the embodiments disclosed in the specification and does not discuss alternative mechanisms that would be covered by the claims. Accordingly, the following explanation should not be used to limit the scope of the claims.

Independent Claim 1 calls for an audio equipment 10 comprising a housing 11 and an audio circuitry installed within the housing 11. Spec., p. 2, lns. 16-18. The audio equipment 10

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also comprises a first protective bar 20 flexibly connected to the housing 11. Spec., p. 3, lns. 12-13.

Claims 2-6 are ultimately dependent upon Claim 1.

## VII. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether Claims 1-6 are anticipated under 35 USC § 102(b) over US Patent No. 4,480,809 ("Healey").

## VIII. ARGUMENT

### Claims 1-6 are Patentable under 35 USC § 102(b) Over Healey.

The Board should reverse the Examiner's improper final rejection of Claims 1-6 under 35 USC § 102(b) based on Healey, as Healey does not disclose all the claimed elements.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In the present case, Healey fails to disclose at least two of the claimed elements.

Claim 1 calls for an audio equipment comprising a housing, an audio circuitry installed within the housing, and a first protective bar flexibly connected to the housing. Claims 2-6 are ultimately dependent upon Claim 1.

Admittedly, Healy discloses a fishfinder including a housing containing sonar circuitry, and that the housing is connected to a base 14. However, Healy does not disclose any audio

circuitry. In addition, Healy does not disclose a first protective bar flexibly connected to the housing.

Applicants/Appellant will address each failure in separate sections.

**A. Healey does not Disclose any Audio Circuitry.**

In the Office Actions, the Examiner admitted that no audio circuitry was shown in Healey. Instead, the Examiner noted that the audio circuitry is inherent to the sonar.

It is true that an inherent disclosure of a prior art reference may be relied upon in the rejection of claims under 35 USC § 102(b). MPEP § 2112, at 2100-53 (8<sup>th</sup> ed., rev. 2, May 2004). However, to establish inherence, “the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.’” *In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). Accordingly, “the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). However, the fact that a certain characteristic may be present in the prior art is not sufficient to establish the inherence of that characteristic. *In re Rikckaert*, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

In other words, the Examiner must show that audio circuit is necessarily found in all fishfinders circa 1982, i.e., the filing date of Healy. Why in all fishfinders? Because if the feature is not present in all fishfinders, then the feature is not necessarily present in fishfinders,

and thus cannot be considered inherent to fishfinders. In addition, the Examiner must show that the audio circuitry is necessarily within the housing, rather than outside of the housing.

Rather than provide such proof, the Examiner argued that Healey discloses an instrument, which, according to Webster's, means "a device to product/perform [sic] a music," which necessitates some audio circuitry to produce the sounds or music. In other words, the Examiner is alleging that the Healey fishfinder is a musical instrument. Applicant/Appellant believes such inferential leap is invalid.

Attached as Appendix B is a print-out of the definition of "thermometer" according to the Merriam-Webster's Online Dictionary ([www.m-w.com](http://www.m-w.com)). Webster's defines "thermometer" as "an instrument for determining temperature..." According to the Examiner's logic, a thermometer is thus an instrument which must produce or perform music, thus necessitating audio circuitry. Applicant/Appellant does not deny that a musical thermometer or a thermometer with an audio card could exist. However, such interpretation would exclude the typical glass-and-liquid thermometer. Accordingly, not all "instruments" have audio circuitry. Therefore, it cannot be assumed that a fishfinder "instrument" necessarily has audio circuitry.

Because the Examiner has not provided any proof that a fishfinder necessarily has audio circuitry, such feature is not inherent on the Healey device. Therefore, the Board should find that the rejection based on Healey is improper.

**B. Healey does not Disclose any Protective Bar.**

The Examiner has alleged that Healey's bracket 12/base 14 is the protective bar called for in Claim 1. Such interpretation is incorrect.

As discussed in the specification, the protective bar is provided to protect the housing from being destroyed at a jobsite because of: (1) tools being dropped on the housing; or (2) the radio falling down.

In Healy, however, the base does not serve to protect the housing. For example, Applicants/Appellant notes base 14, which is part of bracket 12, is "adapted to rest on a support surface or be affixed to a support surface such as a portion of a boat or the like." Healy, col. 2, lns. 19-22. In other words, the base 14 only serves to support the fishfinder in place. Therefore, the bracket 12/base 14 is not a "protective bar" as called for in Claim 1. Thus, Healy cannot anticipate Claim 1 and its dependent claims.

**C. The Healey Base is not Flexibly Connected to the Housing.**

Assuming, *arguendo*, that bracket 12/ base 14 is the protective bar called for in Claim 1, such base is not flexibly connected to the housing as claimed.

Such arrangement is critical and advantageous, as evidenced by the attached declaration of Michael L. O'Banion, a person of ordinary skill in the art (attached hereto as Appendix C), which was previously filed in the present case. Such declaration has been considered and not impeached or discredited by the Examiner.

As discussed in the specification, the protective bar is flexibly connected to the housing for at least partially absorbing the shock occurring from: (1) tools being dropped on the housing; or (2) the radio falling down.

According to Healy, housing 10 has a trunnion 26 which receives resilient washer 30. A knob 34 has a screw 36 threadingly engaged to trunnion 26. A second resilient washer 38 is

## UTILITY PATENT

**B&D No. P-US-TN1444**

disposed between knob 34 and base 14, which is part of bracket 12. Accordingly, base 14 is sandwiched between resilient washers 30, 38, as shown in FIG. 2 of Healey. To fix the angular position of housing 10 relative to base 14, knob 34 is tightened, compressing washers 30, 38, which provide enough friction accordingly.

Because of this compression, base 14 is not flexibly connected to the housing. This is because the washers 30, 38 are so compressed that they cannot absorb any shock force occurring from: (1) tools being dropped on the housing; or (2) the housing falling down. This is not surprising, as none of these occurrences would occur on a sport fishermen's boat, as construction tools are not carried in a boat and the fishfinder is likely to be bolted onto the boat, as disclosed in Healy. Accordingly, the Healy device would not require a protective bar flexibly connected to the housing.

By contradistinction, Claim 1 requires "a first protective bar flexibly connected to the housing."

The Examiner has responded without any evidence that "upstanding portions (16) [are] one of a protective bar flexibly connected (34) to a sidewall (24) of a housing (10)." The Examiner has not provided any evidence as to how such flexible connection is achieved, or even addressed Mr. O'Banion's comments.

Based on the non-disclosure of a flexible connection, as well as the uncontroverted declaration of Mr. O'Banion, Healy does not teach or suggest a flexible connection between the base 14 and the housing 10. Therefore, Healy cannot anticipate Claim 1. Accordingly, Applicant/Appellant urges the Board to reverse the Examiner's rejection.

**IX. APPENDICES**

Applicants/Appellant has attached three appendices: (a) Appendix A--a copy of the claims involved in the appeal; (b) Appendix B--a copy of the definition "thermometer" according to the Webster's Third New International Dictionary; and (c) Appendix C—a copy of the declaration of Michael L. O'Banion, which was previously filed in the present case.

**X. CONCLUSION**

Based on the foregoing, Applicant/appellant urges the Board to rule that Claims 1-6 are patentable over Healy.

Respectfully submitted,



---

Adan Ayala  
PTO Reg. No. 38,373  
Attorney for Applicant/appellant

Appendices attached

**APPENDIX A**

1. An audio equipment comprising:

a housing;

an audio circuitry installed within the housing; and

a first protective bar flexibly connected to the housing.

2. The equipment of Claim 1, further comprising a handle attached to the first protective bar.

3. The equipment of Claim 1, further comprising a connector assembly flexibly connecting the first protective bar to the housing.

4. The equipment of Claim 3, wherein the connector assembly comprises a flexible gasket.

5. The equipment of Claim 4, wherein the flexible gasket is disposed between the first protective bar and the housing.

6. The equipment of Claim 1, further comprising a second protective bar flexibly connected to the housing.





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## Merriam-Webster Online Dictionary

2 entries found for **thermometer**.  
To select an entry, click on it.

thermometer  
clinical thermometer

Go

Main Entry: **ther·mom·e·ter**

Pronunciation: th&amp;(r) - 'mā-m&amp;-t&amp;r

Function: *noun*

Etymology: French *thermomètre*, from Greek *thermE* heat +  
French -o- + -mètre -meter -- more at **THERM**

: an instrument for determining temperature consisting  
typically of a glass bulb attached to a fine tube of glass with  
a numbered scale and containing a liquid (as mercury or  
colored alcohol) that is sealed in and rises and falls with  
changes of temperature

- **ther·mo·met·ric** /'th&r-m&- 'me-trik/ *adjective*- **ther·mo·met·ri·cal·ly** /-tri-k(&-)le/ *adverb*For **More Information on "thermometer"** go to [Britannica.com](http://Britannica.com)Get the **Top 10 Search Results for "thermometer"**

Thesaurus

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APPENDIX C

Docket No. P-US-TN-1444

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: **Roger Q. SMITH et al.**

Serial No.: **09/153,621**

Examiner: **T. Dinh**

Filed: **September 15, 1998**

Group Art Unit: **2841**

For: **HEAVY-DUTY AUDIO EQUIPMENT**

**DECLARATION OF MICHAEL L. O'BANION**  
**UNDER 37 CFR § 1.132**

Hon. Commissioner of Patents and Trademarks  
Washington, DC 20231

Dear Sir:

I, Michael L. O'Banion, depose and state that:

1. I am a citizen of the United States of America residing at 1230 Canon Way, Westminster, MD 21157.
2. In 1969, I began working for the Black & Decker Corporation (hereinafter "Black & Decker") as a Development Engineer, and my present title is Director of Innovation.
3. Black & Decker has been and continues to be recognized as a major supplier of power tools and products to be used in construction jobsites.
4. During the entire course of my work, I have designed power tools and products to be used in construction jobsites.

5. Over the years and in the course of my work in this field, I have had direct contact with workers at construction jobsites and consider that I have gained a significant amount of knowledge relating to the design requirements for power tools and products to be used in construction jobsites.

6. I have been named as inventor or co-inventor in at least 45 US utility patents relating to power tools and products to be used in construction jobsites.

7. I like to fish as a hobby. Accordingly, I have owned, used or had access to fishing equipment, including sonar-based fish indicators, for at least 20 years.

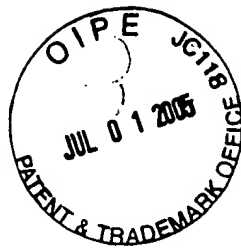
8. I have reviewed the invention of Claim 1 of the present application ("the Claimed Invention"), as well as US Patent No. 4,480,809 ("Healy"). Based on my experience, it is my belief that the arrangement of the Claimed Invention is novel and advantageous over the arrangement shown in Healy.

9. Any power tool or product intended to be used in a construction jobsite has to be relatively tough in order to survive the jobsite conditions. These conditions include other tools being dropped on the product, or the product itself falling down.

10. The Claimed Invention achieves such requirements by having a protective bar which is flexibly connected to the housing. Such flexible connection at least partly absorbs any shock forces occurring from: (1) tools being dropped on the housing; or (2) the radio falling down.

11. On the other hand, Healy discloses a mechanism for easily removing a fish finder housing from a base attached to a boat, and for fixing the angular position of the fish finder housing relative to the base. In this arrangement, housing 10 has a trunnion 26 which receives resilient washer 30. A knob 34 has a screw 36 threadingly engaged to

PATENT



Docket No. P-US-TN-1444

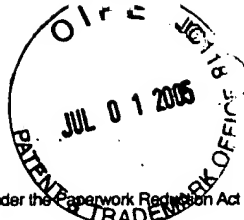
trunnion 26. A second resilient washer 38 is disposed between knob 34 and base 14. Accordingly, base 14 is sandwiched between resilient washers 30, 38, as shown in FIG. 2 of Healey. To fix the angular position of housing 10 relative to base 14, knob 34 is tightened, compressing washers 30, 38, which provide enough friction accordingly.

12. Because of this compression, base 14 is not flexibly connected to the housing. This is because the washers 30, 38 are so compressed that they cannot absorb any shock force occurring from: (1) tools being dropped on the housing; or (2) the housing falling down. This is not surprising, as none of these occurrences would occur on a sport fishermen's boat, as construction tools are not carried in a boat and the fishfinder is likely to be bolted onto the boat.

13. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 6 Sep 2002

  
Michael L. O'Banion



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| <b>TRANSMITTAL FORM</b><br><i>(to be used for all correspondence after initial filing)</i> | Application Number   | 09/153,621             |         |
|  | Filing Date          | September 15, 1998     |         |
|  | First Named Inventor | Roger Q. Smith et al.  |         |
|  | Art Unit             | 2841                   |         |
|  | Examiner Name        | T. T. Dinh             |         |
| Total Number of Pages in This Submission   | 12                   | Attorney Docket Number | TN-1444 |

| ENCLOSURES (check all that apply)   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Fee Transmittal Form<br><br><input type="checkbox"/> Fee Attached.<br><br><input type="checkbox"/> Amendment / Reply<br><br><input type="checkbox"/> After Final<br><br><input type="checkbox"/> Affidavits/declaration(s)<br><br><input type="checkbox"/> Extension of Time Request<br><br><input type="checkbox"/> Express Abandonment Request<br><br><input type="checkbox"/> Information Disclosure Statement<br><br><input type="checkbox"/> Certified Copy of Priority Document(s)<br><br><input type="checkbox"/> Response to Missing Parts/Incomplete Application<br><br><input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)<br><br><input type="checkbox"/> Licensing-related Papers<br><br><input type="checkbox"/> Petition<br><br><input type="checkbox"/> Petition to Convert to a Provisional Application<br><br><input type="checkbox"/> Power of Attorney, Revocation<br>Change of Correspondence Address<br><br><input type="checkbox"/> Terminal Disclaimer<br><br><input type="checkbox"/> Request for Refund<br><br><input type="checkbox"/> CD, Number of CD(s) _____ | <input type="checkbox"/> After Allowance Communication to Technology Center (TC)<br><input checked="" type="checkbox"/> Appeal Communication to Board of Appeals and Interferences<br><input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)<br><br><input type="checkbox"/> Proprietary Information<br><br><input type="checkbox"/> Status Letter<br><br><input checked="" type="checkbox"/> Other Enclosure(s)<br>(please identify below):<br><b>Return Post Card</b> |
| <div>Remarks</div>  |   |  |

| SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT |                   |
|--|-------------------|
| Firm or Individual name                    | Adan Ayala, Esq.  |
| Signature                                  |                   |
| Date                                       | December 10, 2004 |

| CERTIFICATE OF TRANSMISSION/MAILING   |                  |      |                   |
|---|------------------|------|-------------------|
| I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below. |                  |      |                   |
| Typed or printed name   | Adan Ayala, Esq. |      |                   |
| Signature   |                  | Date | December 10, 2004 |

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

# FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 500

## Complete If Known

Application Number 09/153,621  
 Filing Date September 15, 1998  
 First Named Inventor Roger Q. Smith et al.  
 Examiner Name T. T. Dinh  
 Art Unit 2841  
 Attorney Docket No. TN-1444

## METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money ☐ Other ☐ None  
 Order

☒ Deposit Account:

Deposit Account Number 02-2548

Deposit Account Name Black & Decker (U.S.) Inc.

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments  
☐ Charge any additional fee(s) or any underpayment of fee(s)  
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

### 1. BASIC FILING FEE

| Large Entity |          | Small Entity |          | Fee Description        | Fee Paid |
|--------------|----------|--------------|----------|------------------------|----------|
| Fee Code     | Fee (\$) | Fee Code     | Fee (\$) |                        |          |
| 1001         | 790      | 2001         | 395      | Utility filing fee     |          |
| 1002         | 350      | 2002         | 175      | Design filing fee      |          |
| 1003         | 550      | 2003         | 275      | Plant filing fee       |          |
| 1004         | 790      | 2004         | 395      | Reissue filing fee     |          |
| 1005         | 160      | 2005         | 80       | Provisional filing fee |          |

SUBTOTAL (1)

(\$ 0)

### 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

| Total Claims       | Extra Claims | Fee from below | Fee Paid |
|--------------------|--------------|----------------|----------|
| -20 **             | = 0          | X              | = 0      |
| Independent Claims | -3 **        | = 0            | X        |
| Multiple Dependent |              | X              | = 0      |

| Large Entity |          | Small Entity |          | Fee Description  |
|--------------|----------|--------------|----------|--|
| Fee Code     | Fee (\$) | Fee Code     | Fee (\$) |  |
| 1202         | 18       | 2202         | 9        | Claims in excess of 20                                     |
| 1201         | 88       | 2201         | 44       | Independent claims in excess of 3                          |
| 1203         | 300      | 2203         | 150      | Multiple dependent claim, if not paid                      |
| 1204         | 88       | 2204         | 44       | ** Reissue independent claims over original patent         |
| 1205         | 18       | 2205         | 9        | ** Reissue claims in excess of 20 and over original patent |

SUBTOTAL (2)

(\$ 0)

\*\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

### 3. ADDITIONAL FEES

| Large Entity |          | Small Entity |          | Fee Description  | Fee Paid |
|--------------|----------|--------------|----------|--|----------|
| Fee Code     | Fee (\$) | Fee Code     | Fee (\$) |  |          |
| 1051         | 130      | 2051         | 65       | Surcharge - late filing fee or oath  |          |
| 1052         | 50       | 2052         | 25       | Surcharge - late provisional filing fee or cover sheet                     |          |
| 1053         | 130      | 1053         | 130      | Non-English specification  |          |
| 1812         | 2,520    | 1812         | 2,520    | For filing a request for <i>ex parte</i> reexamination                     |          |
| 1804         | 920*     | 1804         | 920*     | Requesting publication of SIR prior to Examiner action                     |          |
| 1805         | 1,840*   | 1805         | 1,840*   | Requesting publication of SIR after Examiner action                        |          |
| 1251         | 110      | 2251         | 55       | Extension for reply within first month                                     |          |
| 1252         | 430      | 2252         | 215      | Extension for reply within second month                                    |          |
| 1253         | 980      | 2253         | 490      | Extension for reply within third month                                     |          |
| 1254         | 1,530    | 2254         | 765      | Extension for reply within fourth month                                    |          |
| 1255         | 2,080    | 2255         | 1,040    | Extension for reply within fifth month                                     |          |
| 1401         | 340      | 2401         | 170      | Notice of Appeal   |          |
| 1402         | 340      | 2402         | 170      | Filing a brief in support of an appeal                                     | 500      |
| 1403         | 300      | 2403         | 150      | Request for oral hearing   |          |
| 1451         | 1,510    | 1451         | 1,510    | Petition to Institute a public use proceeding                              |          |
| 1452         | 110      | 2452         | 55       | Petition to revive - unavoidable   |          |
| 1453         | 1,370    | 2453         | 685      | Petition to revive - unintentional   |          |
| 1501         | 1,370    | 2501         | 685      | Utility issue fee (or reissue)   |          |
| 1502         | 490      | 2502         | 245      | Design issue fee   |          |
| 1503         | 660      | 2503         | 330      | Plant issue fee  |          |
| 1460         | 130      | 1460         | 130      | Petitions to the Commissioner  |          |
| 1807         | 50       | 1807         | 50       | Processing fee under 37 CFR 1.17 (q)                                       |          |
| 1806         | 180      | 1806         | 180      | Submission of Information Disclosure Stmt                                  |          |
| 8021         | 40       | 8021         | 40       | Recording each patent assignment per property (times number of properties) |          |
| 1809         | 790      | 2809         | 395      | Filing a submission after final rejection (37 CFR § 1.129(a))              |          |
| 1810         | 790      | 2810         | 395      | For each additional invention to be examined (37 CFR § 1.129(b))           |          |
| 1801         | 790      | 2801         | 395      | Request for Continued Examination (RCE)                                    |          |
| 1802         | 900      | 1802         | 900      | Request for expedited examination of a design application                  |          |

Other fee (specify) \_\_\_\_\_

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3)

(\$ 500)

## SUBMITTED BY

Name (Print/Type)

Adan Ayala, Esq.

Registration No. (Attorney/Agent)

38,373

Telephone

410-716-2368

Signature

Date

December 10, 2004

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

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If you need assistance in completing this form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.



**Applicant.**

Serial No. \_\_\_\_\_

Info. Disclosure Statement  
Issue Fee Transmittal  
Missing Parts  
Extension of Time  
Transmittal Letter in trip/dup.  
Check for \$  
Other: Letter for

\*Specification has 21 pages, including 2 claims, and un/signed Declaration.

**Attorney**

**Docket No**

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